


JUL 17 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARYCC Docket #96-98
BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of)

Request by ALTS for Clarification of the)
Commission's Rules Regarding Reciprocal)
Compensation for Information Service)
Provider Traffic)

CCB/CPD 97-30

COMMENTS OF BUSINESS TELECOM, INC.

Business Telecom, Inc. ("BTI"), by its undersigned counsel, hereby submits the following comments in response to the Commission's July 2, 1997 Request for Comments in the above-referenced matter.

BTI has very recently become aware of a further illustration of the way in which incumbent local exchange carriers seek to deprive new entrants of reciprocal compensation for the provision of competitive local exchange service to Internet Service Providers. This latest effort undertaken by GTE seeks to exclude a CLEC from compensation for all traffic originating from or terminating to any Enhanced Service Provider. Such an approach effectively forecloses these customers from competition.

The Commission should promptly address the issue raised by ALTS and reiterate that ISPs are end users and a local call to any end user in the same calling area is just that -- a local call. The Commission should also find that GTE's effort to demand the exclusion of such traffic or be required to engage in extensive litigation amounts to bad faith negotiating in violation of the Act.

As a new entrant, the CLEC is being presented with an untenable choice. It must either accept GTE's unilateral revision of the policy of the Telecommunications Act of 1996 (Section

252(b)(5)) and the Commission's interpretation of that Act or be put to the expense in terms of time, money and management resources of arbitrating this issue before the North Carolina Utilities Commission and given GTE's conduct elsewhere, appeals through the courts.

Given the history of the telecommunications industry, it should not come as a surprise that incumbent local carriers will make every conceivable effort to retain their monopoly by impeding the successful introduction of competition into their markets, GTE's recent tactic is such an effort and clearly violates both the terms of the Act and the underlying procompetitive policy of the Act.

In establishing a requirement that incumbent monopoly carriers negotiate with new entrants in good faith to achieve interconnection of competing networks, Congress designed a system incorporating certain sticks and carrots. With respect to interconnection, Congress' stick is Section 251 which requires all incumbent carriers to negotiate interconnection agreements with new entrants in good faith. Given the inherent interest of the monopolist in retaining its monopoly, Congress provided a carrot for the Bell Operating Companies in Section 271 of the Act. In return for "good conduct" in opening the local exchanges to competition, the BOCs would be allowed to enter into the long distance markets in their regions.

This careful design, however, becomes unbalanced when the incentive of 271 is not present. Section 271 applies only to BOCs. GTE was allowed to immediately enter into long distance service in the areas in which it provides local service. As a result, GTE appears to approach interconnection negotiations from the unfettered position of the typical monopolist. GTE's present conduct confirms that it has no intent of voluntarily opening its monopoly markets to new entrants.

If GTE is allowed to insist that a new entrant accept onerous and unreasonable terms or face the prospect of prolonged litigation, it will effectively have undermined the procompetitive purpose of the Act. As the Act makes clear, the benefits of competition flow to the consumer. Conversely, the retention of a monopoly by the exclusion of competition denies those benefits to consumers.

GTE's demand that the CLEC forego compensation for transport and termination of local calls to enhanced service providers, including ISPs, seeks to effectively eliminate the CLEC's entry into that market. Clearly, there is not only no incentive for the CLEC to provide service to ISPs under GTE's terms, there is a clear disincentive. Since the CLEC under GTE's proposal would receive no compensation for transport or termination of traffic to an ISP, it would effectively lose money in providing service to an ISP since while not being compensated for transport and call termination, it will still incur the costs of such termination.

GTE's proposal clearly conflicts with the language of Section 251(b)(5) of the Act that requires the payment of reciprocal compensation for the transport and termination of telecommunications. GTE should not be allowed to hold interconnection with a new entrant hostage to its agreement to effectively cede to GTE one of the fastest growing segments of the local exchange market -- ISP traffic.

GTE's effort to effectively exclude companies such as the CLEC from entering the market is made glaringly obvious by comparing the terms it is insisting on from the CLEC to the contemporaneous terms it has agreed to with U S West and Pacific Bell. The CLEC was presented with GTE's demand on July 7, 1997. On June 23, 1997, U S West and GTE submitted to the Minnesota Public Utilities Commission for its approval an interconnection agreement. This

agreement provides for the interconnection of U S West to the GTE network in areas in Minnesota previously served exclusively by GTE. In that agreement, the parties agree to reciprocal compensation for the termination of local traffic. While the definition of local traffic provides for an exception for traffic under plans in which an end user can choose the scope of its local calling area for an additional fee, there is no exception for traffic from or to enhanced service providers. (Section 1.28) Similarly, the provision for reciprocal compensation for local traffic is devoid of the exception that GTE seeks to impose on the CLEC. (Article 4, Section 3.3.2)

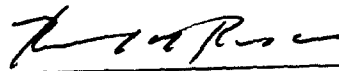
Section 251(c) of the Act requires incumbent LECs to negotiate "in good faith."¹ GTE's efforts to impose the elimination of reciprocal compensation provided for under the Act by defining a local call to an ISP as something other than the local call it is, constitutes bad faith. The Commission should expeditiously reaffirm that no FCC action supports GTE and other ILECs in their effort to eliminate reciprocal compensation for ISP traffic. The Commission should also

¹ The relevant sections of the GTE/U S West interconnection agreement is attached.

with respect to GTE immediately declare that its effort constitutes bad faith negotiations in violation of the Act.

Respectfully submitted,

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Counsel for Business Telecom, Inc.

Dated: July 17, 1997

- 1.21 **"Incumbent Local Exchange Carrier" (ILEC)** means any local exchange carrier that was as of February 8, 1996, deemed to be a member of the Exchange Carrier Association as set forth in 47 C.F.R. §69.601(b) of the FCC's regulations.
- 1.22 **"ISUP"** means a part of the SS7 protocol that defines call setup messages and call takedown messages.
- 1.23 **"IXC" or "Interexchange Carrier"** means a telecommunications service provider authorized by the FCC to provide interstate long distance communications services between LATAs and are authorized by the State to provide inter- and/or intraLATA long distance communications services within the State.
- 1.24 **"Line Information Data Base (LIDB)"** means one or all, as the context may require, of the Line Information databases owned individually by GTE and other entities which provide, among other things, calling card validation functionality for telephone line number cards issued by GTE and other entities. A LIDB also contains validation data for collect and third number-billed calls, which include billed number screening.
- 1.25 **"Local Exchange Carrier" or "LEC"** means any company certified by the Commission to provide local exchange telecommunications service. This includes the Parties to this Agreement.
- 1.26 **"Local Exchange Routing Guide" or "LERG"** means the Bellcore reference customarily used to identify NPA-NXX routing and homing information, as well as network element and equipment designation.
- 1.27 **"Local Number Portability (LNP)"** means the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.
- 1.28 **"Local Traffic"** means traffic that is originated by an end user of one Party and terminates to the end user of the other Party within GTE's then current local serving area, including mandatory local calling scope arrangements. A mandatory local calling scope arrangement is an arrangement that provides end users a local calling scope beyond their basic exchange serving area. Local Traffic does not include optional local calling scopes (i.e., optional rate packages that permit the end user to choose a local calling scope beyond their basic exchange serving area for an additional fee), referred to hereafter as "optional EAS."
- 1.29 **"Meet-Point Billing" or "MPB"** refers to an arrangement whereby two LECs jointly provide the transport element of a switched access service to one of the LEC's end office switches, with each LEC receiving an appropriate share of the transport element revenues as defined by their effective access tariffs.
- 1.30 **"MECAB"** refers to the *Multiple Exchange Carrier Access Billing* ("MECAB") document prepared by the Billing Committee of the Ordering and Billing Forum ("OBF"), which functions under the auspices of the Carrier Liaison Committee ("CLC") of the Alliance for Telecommunications Industry Solutions ("ATIS"). The MECAB

provided in this Article IV. To this end, the Parties agree that there will be interoperability between their networks. Only traffic originated by or terminating to the Parties' end user customers is to be exchanged. USWC may send cellular traffic or traffic of any third party upon notice to and concurrence by GTE prior to any change in traffic distribution, such cellular traffic or traffic of any third party to be considered USWC traffic for purposes of compensation.

- 3.2 Audits. Either Party may conduct an audit of the other Party's books and records, no more frequently than once per twelve (12) month period, to verify the other Party's compliance with provisions of this Article IV. Any audit shall be performed as follows: (i) following at least thirty (30) Business Days' prior written notice to the audited Party; (ii) subject to the reasonable scheduling requirements and limitations of the audited Party; (iii) at the auditing Party's sole cost and expense; (iv) of a reasonable scope and duration; (v) in a manner so as not to interfere with the audited Party's business operations; and (vi) in compliance with the audited Party's security rules.

3.3 Compensation For Exchange Of Traffic.

3.3.1 Mutual Compensation. The Parties shall compensate each other for the exchange of Local Traffic in accordance with Section 3.3.2 of this Article. Charges for the transport and termination of intraLATA toll and interexchange traffic shall be in accordance with the Parties' respective intrastate or interstate access tariffs, as appropriate. Optional extended area service (EAS), where applicable, will be classified as toll traffic. Mandatory EAS will be classified as local traffic.

3.3.2 Compensation for Local Traffic. The Parties shall assume that Local Traffic is roughly balanced between the Parties unless traffic studies indicate otherwise. Either Party may request that a traffic study be performed no more frequently than once a quarter. Should such traffic study indicate, in the aggregate, that either Party is terminating more than 60 percent of the Parties' total terminated minutes for Local Traffic, either Party may notify the other that mutual compensation will commence pursuant to the rates set forth in Appendix B of this Agreement and following such notice it shall begin and continue until a subsequent traffic study shows the traffic to be in balance as described above. Nothing in this Section 3.3.2 shall be interpreted to (i) change compensation set forth in this Agreement for traffic or services other than Local Traffic, including but not limited to internetwork facilities, access traffic or wireless traffic, or (ii) allow either Party to aggregate traffic other than Local Traffic for the purpose of compensation under the arrangement described in this Section 3.3.2, except as set forth in Section 3.1 above.

4. Direct Network Interconnection.

- 4.1 Network Interconnection Architecture. USWC may interconnect with GTE at any of the minimum technically feasible points required by the FCC. Interconnection at additional points will be reviewed on an individual case basis. Where the Parties mutually agree following a Bona Fide Request to directly interconnect their respective networks, interconnection will be as specified in the following subsections. The POIs

SIGNATURE PAGE

IN WITNESS WHEREOF, each Party has executed this Agreement to be effective as of the date first above written.

Contel of Minnesota Incorporated,
d/b/a GTE Minnesota

By

Name Donald W. McLeod

Title Vice President- Local Competition/Interconnection

Date 6-16-97

U S WEST Communications, Inc.

By

Name Kathy Fleming

Title Executive Director - Interconnect

Date 6/18/97

FORM APPROVED

Attorney


Date 6/15/97

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of July 1997, copies of COMMENTS OF BUSINESS TELECOM, INC. were hand-delivered to the following:

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